IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-07-2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 4550 of 1998
and
W.P.M.P. No. 3871 of 2004

T. Subramaniam .. Petitioner

Versus

1. Presiding Officer
   I Additional Labour Court
   Chennai

2. The Management
   Chennai Metropolitan Transport
   Corporation
   Chennai - 600 002 .. Respondents

Petition under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. C. Manohar
For Respondents : M/s. King & Patridge

ORDER

The petitioner has come forward with this writ petition praying for a Writ of Certiorarified Mandamus calling for the records of the first respondent - First Additional Labour Court, Chennai relating to its order in I.D. No. 420 of 1995 dated 10.11.1997 and to quash the impugned order to the extent of declaring that there is no need to reinstate the petitioner in service, with a direction to the second respondent Transport Corporation to reinstate the petitioner in service, with backwages and other attendance benefits.

2. The petitioner was employed as conductor in the second respondent/corporation, hereinafter referred to as corporation. While he was on duty, on 20.07.1991, in route No.63-B between Mepur to Broadway, the bus was checked by the checking inspector at about 21.45 hours and found that two cans of illicit liquor wrapped in a bag was kept under passenger seat and when questioned, nobody claimed ownership. The petitioner's cash bag was also checked and a deficit of Rs.18.45 was found therein. To this effect, a report was submitted by the checking inspector to the corporation and based on the same, a charge memo dated 29.07.1991 was issued to the petitioner alleging that (i) the petitioner has allowed two cans of

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illicit liquor to be carried over in the bus and (ii) there was a shortage of Rs.18.45. On receipt of the same, the petitioner has submitted his explanation stating that he had no knowledge about the two cans kept by the passengers in a bag; that he and the driver have spent Rs.16/- for tea and meals. Not satisfied with the explanation offered by the petitioner, the corporation has appointed an enquiry officer, who conducted enquiry and submitted his report on 06.04.1992 finding that the first charge that the petitioner allowed the passenger to carry illicit alcohol is not proved, but two cans of alcohol found under the passengers seat is proved; that the second charge of temporary misappropriation of Rs.18.45 was proved. Based on the said report of the enquiry officer, on 28.05.1992, the corporation has issued second show cause notice calling upon the petitioner to show cause as to why he should not be dismissed from service and on receipt of the same, the petitioner has submitted his explanation dated Nil. Thereafter, final order of dismissal from service was passed by the corporation on 03.09.1992, which was challenged by the petitioner before the first respondent/labour court by filing I.D. No. 420 of 1995. The first respondent, after consideration of the materials on record upheld the dismissal of service and directed the corporation to pay back wages and other monetary benefits to the petitioner from the date of dismissal of service till the date of award namely 10.11.1997. The refusal of relief of reinstatement is challenged in this writ petition.

3. Mr. Manohar, learned counsel appearing for the petitioner submits that in so far as the first charge is concerned, the enquiry officer has held that the allegation that the petitioner has allowed the passengers to carry two cans of alcohol is not proved. In so far as the second charge is concerned, the petitioner has submitted that he and the driver have spent Rs.16/- for tea and meals, which he is entitled to use during the course of the duty, any event, the said act may amount to shortage and not misappropriation, which was not properly considered by the first respondent relying on clause 25 (XLi) (f) of the certified standing orders of the Corporation which speaks about holding deficit cash balance exceeding rupees 10 and also misappropriation; that the disciplinary authority passed an order of dismissal allegedly considering the past records, if so, it should have been mentioned in the second show cause notice, but without doing so, considering the alleged antecedents, awarding punishment of dismissal from service is illegal, which was not properly considered by the labour court and prayed for allowing the writ petition.

4. The learned counsel for the petitioner relied on the below mentioned decisions:-

i) (M. Arasu vs. The Senior Regional Manager, Tamil Nadu Civil Supplies Corporation, Madras and others) I.L.R. (1998) 2 Madras 1478, wherein in para-8, a learned single judge of this Court held thus:-

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> "8. In the light of the said decision, it is seen that as already stated in the provisional conclusion notice for dismissal, the first respondent

has considered 'he is an habitual offender' and he has committed serious irregularities one by one during his period of service. Without providing opportunities or details. In other words, the earlier commissions or omissions or violations or punishments have not been specifically disclosed in the said show cause notice. On the other hand, in the impugned order dated 08.03.1988 dismissing the petitioner from service, at page No.2, the first respondent has enumerated various offences and punishment incurred by the petitioner. He has catalogued nearly about 7 earlier punishments and which particulars have not been disclosed in the second show cause notice dated 15.09.1997. Hence, the decision cited supra by the learned counsel for the petitioner is directly applicable to the present case. Accordingly, the conclusion in so far as punishment arrived at by the first respondent, without disclosing the particulars regarding previous records in the second show cause notice itself is fatal to the impugned order passed by the first respondent."

ii) In (G. Ganesamoorthy vs. The Presiding Officer, I Additional Labour Court, Madras-2 and others) 1999 Writ Law Reporter, a learned single Judge of this Court held in para-9 thus:-

"9. But, the question here is whether such a misconduct committed by the employee should be punished with the sentence of economic death by dismissing him from service. Certainly, the act committed by the petitioner is a misconduct. But, it shall be considered as to whether it could be said that the dismissal from service only would be a proportionate punishment to the said misconduct committed by the petitioner. There shall be a definite punishment so as to make him feel the pinch of the mistake committed by him. The punishment shall be such to make the employee to feel that what he has done is not proper. In the light of the facts of this case, it could be concluded that the misconduct is not so serious as to entail the punishment of sentence of economic death."

iii) In the decision of a division bench of this Court reported in (The President, Cholan Pokkuvarathu Kazhagam, Madras vs. The Presiding Officer, Industrial Tribunal, Madras and another) 1989 II LLJ 233, it was held in para-3 thus:-

"3. ....There is a complaint that the past record of service of the workman was not at all looked into on the question of punishment. No room for such complaint ought to have been given. We find that the first respondent did not adhere to the well-accepted principles of adjudication of questions like the

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present one and this feature obliges us to interfere in writ appeal. We are not able to subscribe our support to the reasonings expressed by the learned single Judge that the discussion by the first respondent having taken in cases of a number of other workmen, would absolve the first respondent from his obligation to discuss the case of the workman, T. Sambanam with reference to the materials relating to him. Accordingly, this writ appeal is allowed..."

5. Per contra, Mr. Ranganatha Reddy, learned counsel appearing for the corporation submitted that the enquiry officer, in his report, has stated that charge No.1 was partly proved and the second charge is fully proved. It is further submitted that the enquiry officer has afforded sufficient opportunity to the petitioner to adduce evidence on his side and also to cross-examine the witnesses of the management; that the enquiry was conducted in a fair and proper manner; that based on the findings of the enquiry officer, a second show cause notice was issued and the petitioner also submitted his explanation, which was carefully examined by the corporation and thereafter the petitioner was removed from service. It is further submitted that in accordance with the provisions of Section 33 (2)(b) of the Industrial Disputes Act, a petition was filed by the corporation before the Tribunal seeking approval of removal of the petitioner from service and the same was also granted on 03.01.1995. It is further submitted that the past record of the petitioner was examined in detail which shows that he had committed similar misconduct twice in previous occasion and he was awarded punishments. It is also stated that the first respondent has rightly held that the charges levelled against the petitioner were proved and the punishment of removal from service is proportionate to the charges, however, ordered to pay back wages and other attendant benefits.

6. The learned counsel appearing for the corporation relied on the below mentioned decisions in support of his case:-

i) Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Secy., Sahakari Noukarara Sangha, (2000) 7 SCC 517, wherein in Para No.3, 6 and 8, it was held thus:-

"3. The question involved in these appeals is — whether the High Court was justified in confirming the order passed by the Labour Court reinstating the respondent workmen with 25% back wages in spite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established. Apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though a number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot

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be rewarded or legalised by reinstatement in service with full or part of back wages.

6. As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, maybe for a small or large amount, there is no question of showing uncalled-for sympathy and reinstating the employees in service. Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh v. Krishnan Behari.) In U.P. SRTC v. Basudeo Chaudhary this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs. 65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs. 2.35 but recovering @ Rs. 5.35 per head and also by making entry in the waybill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corpn. Ltd. v. Kala Singh this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held (at SCC pp. 161-62, para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty.

7. In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent workmen with 25% back wages. For giving the aforesaid direction, the Labour

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Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the management.

8. In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases."

ii) Municipal Committee, Bahadurgarh v. Krishnan Behari and others, (1996) 2 LLN 881, wherein in Para No.4, the Honourable Supreme Court held thus:-

"4. It is obvious that the respondent has been convicted of a serious crime and it is a clear case attracting under proviso (a) to Article 311(2) of the Constitution. In a case of such nature – indeed, in cases involving corruption – there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriate that is relevant. The Director had interfered with the punishment under a total misapprehension of the relevant factors to be borne in mind in such a case."

iii) In the decision of a learned single judge of this Court reported in (Pattukottai Azhagiri Transport Corporation Limited, Vellore, rep. by General Manager vs. The Presiding Officer, II Additional Labour Court, Madras and another) (2002) 1 M.L.J. 612, it was held in Para No.9, it was held thus:-

"9. In the earlier part of my order, I have referred to the charges levelled against the conductor. Except charge No.3, all other charges have been proved. There is no dispute that he was given adequate opportunity in the enquiry. He not only participated in the enquiry, but also cross-examined the management witnesses. Though details regarding past record were not shown in the show cause notice as well as in the order of punishment, as observed in the Supreme Court decisions, in case of proved misappropriation, it is immaterial to consider past records. On this ground, namely, for non-considering the past records, the labour court cannot substitute the penalty imposed by the employer. Further, as rightly argued by Mr. Sanjay Mohan, the employer in our case Transport Corporation is entirely depending on the conduct of the conductor in collecting fares from the passengers and

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depositing them with the concerned officers. It is a responsibility of the conductor of a bus belonging to the Transport Corporation to collect fare from the passengers and deposit the same with the officers. He acts in a fiduciary capacity and it would be a case of gross misconduct if knowingly he does not collect any fare or any correct amount of the fare from the passengers, in such cases, dismissal from service would be a proper punishment. The labour court is expected to exercise its discretion under Sec.11-A of the Industrial Disputes Act judicially and its order modifying the punishment of dismissal into reinstatement foregoing backwages for certain period, merely on the ground of non-consideration of past records cannot be sustained. The 2nd respondent, as a bus conductor of the State Transport Corporation is duty bound to issue tickets to all the passengers and collect correct fare from them and deposit the same with the Corporation. In our case, he collected fares, but failed to issue tickets to some passengers, collected 50 paise from a lady passenger, but issued 5 paise ticket instead of 50 paise ticket, failed to collect fares 5 X 50 paise and issued tickets to 5 passengers and also misbehaved towards checking staff before the public. As stated earlier, it is the responsibility of the bus conductor to collect the correct fare from the passengers and deposit the same with their employer. Since they act in a fiduciary capacity, as observed by the Supreme Court, it would be a case of gross misconduct, if knowingly they do not collect any fare or correct amount of fare."

iv) The Honourable Supreme Court in the decision reported in (V. Ramana vs. A.P.SRTC and others) (2005) 7 Supreme Court Cases 338 held in Para Nos. 3, 4, 6, 11 and 12 thus:-

"3. Questioning the correctness of the said order, writ petition was filed. Learned Single Judge before whom the matter was placed held that there was some divergence of view in the judgments of learned single Judges, and therefore, referred the matter to a larger Bench. The reference was as regards the effect of acquittal in the criminal case and smallness of the amount involved. The High Court by the impugned Judgment held that the acquittal in the case was really of no consequence and small amount of discrepancy was equally inconsequential.

4. ...It is the responsibility of the conductors to collect correct fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare. A conductor holds a post of trust. A person guilty of breach of trust

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should be imposed punishment of removal from service. The factual position shows that the appellant's conduct in collecting fare at the designated place and not collecting fare from persons who had already travelled were in violation of various regulations contained in the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations 1963 (in short 'the Regulations'). In Karnataka State Road Transport Case it was held that it is misplaced sympathy by Courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It was finally held that the order of dismissal should not have been set aside. This view was reiterated by a three-Judge Bench in Regional Manager, RSRTC, v. Ghanshyam Sharma, where it was additionally observed that the proved acts amount either to a case of dishonesty or of a gross negligence, and bus conductors who by their actions or inactions cause financial loss to the corporation and not fit to be retained in service.

6. The scope of interference with quantum of punishment has been the subject-matter of various decisions of this Court. Such interference cannot be a routine matter.

11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the Court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigation, it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed."

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7. The facts of this case are fully narrated supra. The petitioner herein was issued with charge memo containing two charges. The first charge is that he allowed the passengers to carry alcohol and the second charge is that he misappropriated a sum of Rs.18.45 from the ticket collection amount. The enquiry officer found that two cans of liquors were transported, however, held that the petitioner has not allowed the passengers to transport the same and that the second charge of temporary misappropriation is proved. Based on the report of the enquiry officer, the disciplinary authority issued second show cause notice stating that the first charge is partly proved and the second charge is fully proved and ultimately imposed the punishment of dismissal from service. Aggrieved by the same, the petitioner has filed I.D. No. 420 of 1995 before the first respondent/labour court. The labour court found that the corporation has followed the principles of natural justice before awarding punishment; that on the same day of checking, the petitioner has repaid Rs.18.45 and considering the same it felt that the order of dismissal is disproportionate, with the result, ordered to pay back wages and other attendant benefits from the date of dismissal till the date of award, but confirmed the order of dismissal from service. Admittedly, the second respondent has not challenged the order of the labour court awarding back wages and other benefits to the petitioner.

8. This Court carefully considered the argument of the counsel on either side and perused the order of the second respondent as well as the first respondent. The petitioner herein has admitted shortage of Rs.18.45 at the time of checking. It is stated by the petitioner to the checking inspector that he used Rs.16/- for his and the driver's personal expenses (the amount is mentioned in some places of the order of the first respondent as Rs.12.45). On careful reading of the orders passed by the disciplinary authority as well as the labour court, it is clear that the second charge against the petitioner is found proved.

9. Misconduct is defined in clause 25 (XLi)of the Certified Standing orders of the Corporation which states that misappropriation of corporation money or holding deficit cash balance of Rs.10/- would amount to misconduct. Clause 26 speaks about punishment for misconduct, which is inclusive of dismissal from service.

10. An argument was advanced by the counsel for the petitioner that assuming the shortage was Rs.18.45, it cannot be construed as temporary misappropriation. In this case, the petitioner himself has admitted that he utilised a sum of Rs.16/- towards his personal as well as driver's expenses, which act definitely amount to temporary misappropriation, which is one of the offences constituting misconduct.

11. It is argued by the learned counsel for the petitioner that the disciplinary authority has taken note of previous records surprisingly without disclosing the same in the second show cause notice. If the punishment is awarded only on the basis of previous record without disclosing the same in the second show cause notice,

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definitely the same is fatal, but in this case, the disciplinary authority found the petitioner guilty of misconduct for the said temporary misappropriation, however, a passing remark of previous record was also made, which no way vitiate the order of dismissal. The said order was rightly confirmed by the labour court, hence, this Court is of the considered view that the respondents have came to the right conclusion, on valid evidence that the charge of misappropriation against the petitioner is proved and imposed the punishment of dismissal.

12. The other argument of the learned counsel for the petitioner is that for the said meagre amount, punishment of dismissal from service is disproportionate. Once temporary misappropriation is proved, the amount involved is immaterial. The Honourable Supreme Court in the decision reported in (V. Ramana vs. A.P.SRTC and others) (2005) 7 Supreme Court Cases 338 held that

> "...it is the responsibility of the conductors to collect correct fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare. A conductor holds a post of trust. A person guilty of breach of trust should be imposed punishment of removal from service."

It was further held by the Honourable Supreme Court that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, there is no scope for interference.

13. In this case, the first respondent/labour court, considering the fact that the petitioner repaid the amount of Rs.18.45 on the same day of checking, ordered to pay back wages and attendant benefits from the date of dismissal till the date of award, while confirming the order of dismissal. The said extent of the order was not challenged by the second respondent.

14. In view of the above discussion, this Court is of the considered view that the award passed by the first respondent/labour court is perfectly valid and no interference is warranted. The writ petition is dismissed. No costs. Consequently, connected WMP is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

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I Additional Labour Court
Chennai

2. The Management
Chennai Metropolitan Transport Corporation
Chennai- 600 002.

1 cc to Mr.C. Manohar, Advocate, Sr. 28373
1 cc to M/s. King and Patridge, Advocate, Sr. 28533

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